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July 18, 2006

Honorable Ron Swegles, Mayor  
And Members of the City Council  
City of Sunnyvale  
Sunnyvale, California 94086

Re: Appeal Of Planning Commission Decision On Variance Application  
Property: 734 Ashbourne Drive  
Applicants: Lorraine Guerrero Maciejowski  
Mieczyslaw Maciejowski

Our firm represents Lorraine Guerrero Maciejowski and Mieczyslaw Maciejowski, the applicants for a variance. This letter will address the issue of whether the City of Sunnyvale has provided a reasonable accommodation for the disability of Ms. Maciejowski's mother in the variance process.

**Relevant Factual Background**

Mr. and Mrs. Maciejowski seek the requested variance for the benefit of Mrs. Maciejowski's mother, Elveda Guerrero. Mrs. Guerrero is 86 years old and has a mobility impairment. Walking and standing are difficult and painful for her. She must rely on a walker or wheelchair to get around. In addition, Mrs. Guerrero has difficulty providing for her personal needs. Mrs. Guerrero requires assistance with such tasks as bathing.

The Maciejowski home contains two bathrooms, both of which present problems for Mrs. Guerrero. The master bath (which is connected to Mr. and Mrs. Maciejowski's bedroom) contains the only shower suitable for Mrs. Guerrero's use. However, the shower does not contain a chair or other place to sit. Mrs. Guerrero's age and disabilities make it difficult for her to stand in the shower and maintain her balance. In addition, the door to the master bath is not wide enough to accommodate a wheelchair or a walker.

A second bathroom contains a bathtub that is not suitable for Mrs. Guerrero's use. The lip of the bathtub requires Mrs. Guerrero to take a high step in and out of a wet tub. Getting in and out of the bathtub is a painful and potentially dangerous process that could expose Mrs. Guerrero to falls and broken bones.

To provide a reasonable accommodation for Mrs. Guerrero's disabilities, Mr. and Mrs. Maciejowski propose to remodel the existing second bathroom. The remodeled bathroom will include a wheelchair turnaround, grab bars, and a shower with a low threshold and a chair.

As will be explained in detail by Mr. and Mrs. Maciejowski, the proposed project will require moving the exterior wall 3 feet into the 9-foot side yard setback, leaving a 6-foot setback. The new addition will not bring the structure closer to any neighbors, but will extend toward the street (this is a corner lot). The entire structure will be within the existing fence line.

### Legal Discussion

The Americans with Disabilities Act is a broad statute that applies to zoning applications as well as other areas, such as housing, transportation and the workplace. With regard to zoning, federal law requires cities to make reasonable accommodations in their rules, policies, practices and services.

For purposes of this subsection, discrimination includes...(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

Title 42, United States Code, section 3604(f)(3).

Project Sentinel, a non-profit agency supported by the City of Sunnyvale, has addressed the application of the Federal Fair Housing Amendments to the ADA in its letter dated July 13, 2006. A copy of the letter is attached as **Exhibit A**.

Several local cities have adopted specific ordinances to implement federal protections for the disabled in the zoning process. Copies of three examples are attached as follows:

- **Exhibit B:** Campbell Municipal Code § 21.50.010 and following;
- **Exhibit C:** San Jose Municipal Code § 20.160.010 and following;
- **Exhibit D:** San Rafael Municipal Code § 14.26.010 and following.

All three of the above-referenced municipal codes provide a process for citizens to apply for a reasonable accommodation.

A request for reasonable accommodation may be made by any person with a disability, their representative or any entity, when the application of a zoning law or other land use regulation, policy or practice acts as a barrier to fair housing opportunities.

(Exhibit D, San Rafael Municipal Code, § 14.26.020.)

The process provided by these codes includes various factors to be considered in each application. Both Campbell and San Jose consider, among other factors, the special need created by the disability and the potential benefit that can be accomplished by the

requested modification. (Exhibit B: Campbell Municipal Code § 21.50.050; Exhibit C: San Jose Municipal Code § 20.160.050.)

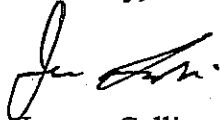
On the other hand, the City of Sunnyvale has no such ordinance. This lack of policy has left both the Applicants and the City without a process for considering reasonable accommodation requests.

Despite the lack of process built into the Municipal Code, the Applicants raised the issue of Elveda Guerrero's need for a reasonable accommodation for her disability on at least two occasions. "Ms. Guerrero noted that the reason for this addition is to accommodate a handicapped person." (Minutes from the Administrative Hearing of March 2, 2006.) A similar statement is contained in the Planning Commission Minutes of April 10, 2006.

Despite these statements, the City did not make the request for a reasonable accommodation a part of its analysis in deciding to deny the variance request. Instead, the City used its "Variance Justifications" document, a standard form, to evaluate the request. The City's failure to even consider the request for a reasonable accommodation is troubling at best, and at worst a potential violation of federal law.

For these reasons, Applicants Lorraine Guerrero Maciejowski and Mieczyslaw Maciejowski respectfully request that the City Council grant their request for a reasonable accommodation on behalf of Elveda Guerrero and grant the requested variance.

Sincerely,



Jerome Galli

**project  
sentinel**

The Fair Housing Center  
430 Sherman Avenue, Suite 308  
Palo Alto, CA 94306  
Tel. (650) 321-6291 Fax (650) 321-4173  
projsempa@aol.com

July 13, 2006

Sunnyvale City Council  
456 West Olive Ave.  
Sunnyvale, CA 94086  
(408) 730-7483

RE: Appeal of a variance to the City of Sunnyvale to allow an ADA compliant addition to a private residence.

To Whom It May Concern:

Project Sentinel is a non-profit agency, supported by the City of Sunnyvale, that provides education, counseling, conciliation, investigation, and when necessary, legal referrals to persons alleging housing discrimination. We are writing you on behalf of Mrs. Lorraine Guerrero Maciejowski who currently resides at 734 Ashbourne Drive in Sunnyvale.

Project Sentinel's purpose in sending this letter is to provide you with information about the law and to aid Mrs. Maciejowski in requesting the reasonable accommodation of a variance to allow an ADA compliant addition to her home. Mrs. Elveda Guererra, Mrs. Maciejowski's mother, resides at 734 Ashbourne Drive and uses a wheelchair. Currently there is no ADA compliant bathroom in the home with adequate space for wheelchair maneuverability. Mrs. Maciejowski has plans to expand the bedroom and to add an ADA compliant bathroom in the side yard area of the property. This proposal would require that a portion of the addition be built 17 feet from the face of the curb. I understand that the Sunnyvale Municipal Code requires a minimum 20-foot setback. However, the alternative proposed by the city to add the bathroom to the back of the residence would create undue hardship for the residents. This alternate project would add considerably more cost, and could potentially create structural issues and damage the existing sewage line.

Ms. Rebecca Moon Esq., Assistant City Attorney, has advised the Planning Commission that they may use ADA Laws to grant a variance. In line with this suggestion Project Sentinel requests that as a reasonable accommodation for Mrs. Elveda Guerrero's disability you approve the variance to allow an ADA compliant addition to 734 Ashbourne Drive as proposed by Mrs. Maciejowski.

The federal Fair Housing Amendments Act ("FHAA") contains sweeping prohibitions of discrimination on the basis of disability. The FHAA makes it unlawful to discriminate against tenants with physical and mental disabilities. Discrimination against tenants with disabilities is specifically defined to include "a refusal to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford such persons equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B). Accordingly, persons with disabilities are not simply entitled to equal treatment; rather, Congress has singled them out for special treatment in the form of reasonable accommodations. California's Unruh Civil Rights Act and Fair Employment and Housing Act mirrors federal law with regard to disability discrimination. Cal. Civ. Code §§ 51-53, 54.1-54.8; Cal. Gov't Code §§ 12955-12988.

ATTACHMENT 3

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It is my hope that this letter will simply make you aware of the possible fair housing implications of this situation, and that you will choose to take the recommended action. If the council wishes to speak to Project Sentinel about these issues, feel free to contact me at (650) 321-6291 ext 104.

Sincerely,



Adriana Windham  
Fair Housing Specialist

Campbell Municipal Code

Title 21 ZONING

Chapter 21.50 REASONABLE ACCOMMODATIONS

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21.50.010 Purpose of chapter.

It is the policy of the city to provide reasonable accommodation for persons with disabilities seeking fair access to housing in the application of its zoning laws. The purpose of this chapter is to provide a process for making a request for reasonable accommodation. (Ord. 2043 §1(part), 2004).

## Chapter 21.50 REASONABLE ACCOMMODATIONS

A. Form to be provided by the community development director. Any person who requires reasonable accommodation, because of a disability, in the application of a zoning law which may be acting as a barrier to fair housing opportunities may do so on a form to be provided by the community development director.

11.3.1.111 DATA/TITLE21/Chapter 21 50 PRISONARI E ACCOMMOD 7/7/2006



Title 21 ZONING

Chapter 21.50 REASONABLE ACCOMMODATIONS

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**21.50.030 Required information.**

The applicant shall provide the following information:

- A. Name. Applicant's name, address, and telephone number;
- B. Address. Address of the property for which the request is being made;
- C. Use of property. The current actual use of the property;
- D. Relevant provision or regulation. The Zoning Code provision, regulation, or policy from which accommodation is being requested; and
- E. Basis for claim. The basis for the claim that the individual is considered disabled under the Fair Housing Act and why the accommodation is necessary to make the specific housing available to the individual. (Ord. 2043 §1(part), 2004).

Title 21 ZONING

Chapter 21.50 REASONABLE ACCOMMODATIONS

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21.50.040 Notice of request for accommodation.

Written notice that a request for reasonable accommodation shall be given as follows:

- A. Mailed to all immediately adjacent property owners. In the event that there is no approval sought other than the request for reasonable accommodation, the notice shall be mailed to the owners of record of all properties which are immediately adjacent to the property which is the subject of the request.
- B. Mailed in compliance with Chapter 21.64 (Public Hearings). In the event that the request is being made in conjunction with some other process, the notice shall be mailed along with the notice of the other proceeding, in compliance with Chapter 21.64 (Public Hearings). (Ord. 2043 §1(part), 2004).

Title 21 ZONING

Chapter 21.50 REASONABLE ACCOMMODATIONS

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**21.50.050 Grounds for accommodation.**

In making a determination regarding about the reasonableness of a requested accommodation, the following factors shall be considered:

- A. Special needs. Special need created by the disability;
- B. Potential benefit. Potential benefit that can be accomplished by the requested modification;
- C. Potential impacts. Potential impact on surrounding uses;
- D. Physical attributes. Physical attributes of the property and structures;
- E. Alternative accommodations. Alternative accommodations which may provide an equivalent level of benefit;
- F. A single housekeeping unit. In the case of a determination involving a single-family dwelling, whether the household would be considered a single housekeeping unit if it were not using special services that are required because of the disabilities of the residents;
- G. Imposition of financial or administrative burden. Whether the requested accommodation would impose an undue financial or administrative burden on the city. (Ord. 2043 §1(part), 2004).

Title 21 ZONING

Chapter 21.50 REASONABLE ACCOMMODATIONS

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21.50.060 Notice of proposed decision.

A. Notice of decision. Notice of the proposed decision shall be made in the same manner as provided in Section 21.50.040 (Notice of Request for Accommodation), above.

Such notice shall inform property owners that within 10 days of the date the notice is mailed, any person may make a written request for a community development director's hearing.

B. Decision shall become final. If no request for hearing is received, the proposed decision shall become a final community development director's decision.

C. Community development director's hearing. If someone requests a hearing, the community development director shall conduct a hearing on the request for reasonable accommodation at which all reasonable evidence and credible testimony shall be considered. (Ord. 2043 §1 (part), 2004).

Title 21 ZONING

Chapter 21.50 REASONABLE ACCOMMODATIONS

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**21.50.070 Notice of community development director's decision.**

- A. Decision notice. The community development director shall issue a notice of decision either granting the request, including any reasonable conditions, or disapproving the request after the required noticing period has ended or a community development director's hearing has been held.
- B. Notice shall contain findings. The notice of decision shall contain the community development director's factual findings, conclusions, and reasons for the decision.
- C. Mailing of notice. The notice of decision shall be mailed in the same manner as identified in Section 21.50.040 (Notice of Request for Accommodation), above.
- (Ord. 2043 §1(part), 2004).

Title 21 ZONING

Chapter 21.50 REASONABLE ACCOMMODATIONS

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**21.50.080 Appeal to planning commission.**

A. May appeal within 10 days. Within 10 days after the notice of community development director's decision, any person may appeal in writing to the planning commission in compliance with Chapter 21.62 (Appeals).

B. Grounds for appeal. All appeals shall contain a statement of the grounds for the appeal in compliance with Chapter 21.62 (Appeals). (Ord. 2043 §1(part), 2004).


San Jose Municipal Code

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San José Municipal Code

Title 20 ZONING 1

## Chapter 20.160 REQUESTS FOR REASONABLE ACCOMMODATION

## **Chapter 20.160**

# **REQUESTS FOR REASONABLE ACCOMMODATION**

### Sections:

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| <u>20.160.020</u> | Application.                         |
| <u>20.160.030</u> | Required information.                |
| <u>20.160.040</u> | Notice of request for accommodation. |
| <u>20.160.050</u> | Grounds for accommodation.           |
| <u>20.160.060</u> | Notice of proposed decision.         |
| <u>20.160.070</u> | Director's hearing.                  |
| <u>20.160.080</u> | Notice of director's decision.       |
| <u>20.160.090</u> | Appeal to planning commission.       |

### **20.160.010 Purpose**

It is the policy of the city of San José to provide reasonable accommodation for persons with disabilities seeking fair access to housing in the application of its zoning laws. The purpose of this chapter is to provide a process for making a request for reasonable accommodation.

(Ord. 26248.)

**20.160.020 Application.**

- A. Any person who requires reasonable accommodation, because of a disability, in the application of a zoning law which may be acting as a barrier to fair housing opportunities may do so on a form to be provided by the director.
- B. If the project for which the request is being made also requires some other planning permit or approval, then the applicant shall file the request together with the



application for such permit or approval.

(Ord. 26248.)

**20.160.030 Required information.**

The applicant shall provide the following information:

1. Applicant's name, address and telephone number;
2. Address of the property for which the request is being made;
3. The current actual use of the property;
4. The zoning code provision, regulation or policy from which accommodation is being requested;
5. The bases for the claim that the individual is considered disabled under the Fair Housing Act and why the accommodation is necessary to make the specific housing available to the individual.

(Ord. 26248.)

**20.160.040 Notice of request for accommodation.**

Written notice of a request for reasonable accommodation shall be given as follows:

1. In the event that there is no approval sought other than the request for reasonable accommodation, the notice shall be mailed to the owners of record of all properties which are immediately adjacent to the property which is the subject of the request.
2. In the event that the request is being made in conjunction with some other process, the notice shall be transmitted along with the notice of the other proceeding.

(Ord. 26248.)

**20.160.050 Grounds for accommodation.**

In making a determination regarding the reasonableness of a requested accommodation, the following factors shall be considered:

1. Special need created by the disability;
2. Potential benefit that can be accomplished by the requested modification;
3. Potential impact on surrounding uses;

(Ord. 26248.)

**20.160.060 Notice of proposed decision.**

(Ord. 26248.)

**20.160.070 Director's hearing.**

(Ord. 26248.)

**20.160.080 Notice of director's decision.**

(Ord. 26248.)

**20.160.090 Appeal to planning commission.**

A. Within thirty days after the notice of director's decision, any person may appeal in writing to the planning commission.

B. All appeals shall contain a statement of the grounds for the appeal.

(Ord. 26455.)

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San Rafael Municipal Code

Title 14\* ZONING

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Chapter 14.26 REQUESTS FOR REASONABLE ACCOMMODATION14.26.010 Purpose.14.26.020 Applicability.14.26.030 Application requirements.14.26.040 Review authority.14.26.050 Public notice.14.26.060 Findings and decision.14.26.070 Appeal of determination.**14.26.010 Purpose.**

This chapter provides a procedure to request reasonable accommodation for persons with disabilities seeking equal access to housing under the Federal Fair Housing Act and the California Fair Employment and Housing Act (the Acts) in the application of zoning laws and other land use regulations, policies and procedures. (Ord. 1838 § 54 (part), 2005).

**14.26.020 Applicability.**

A. Authorized Applicants. A request for reasonable accommodation may be made by any person with a disability, their representative or any entity, when the application of a zoning law or other land use regulation, policy or practice acts as a barrier to fair housing opportunities. A person with a disability is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities, anyone who is regarded as having such impairment or any who has a record of such impairment. This chapter is intended to apply to those persons who are defined as disabled under the Acts.

B. Elimination of Regulatory Barriers. A request for reasonable accommodation may include a modification or exception to the rules, standards and practices for the siting, development and use of housing or housing-related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to housing of their choice. A request for reasonable accommodation shall comply with Section 14.26.030 (Application requirements) of this chapter. (Ord. 1838 § 54 (part), 2005).

**14.26.030 Application requirements.**

A. Application. A request for reasonable accommodation shall be initiated by submitting to the community development department a completed application form, signed by the property owner or authorized agent, accompanied by the required fee, and the following information submitted in the form of a letter to the community development director:

1. The applicant's name, address and telephone number;
2. Address of the property for which the request is being made;
3. The current use of the property;
4. The basis for the claim that the individual is considered disabled under the Acts;
5. The zoning code provision or other city regulation or policy from which reasonable accommodation is being requested; and
6. An explanation of why the reasonable accommodation is necessary to make the specific property accessible to the individual.

B. Review with Other Planning Applications. If the project for which the request for reasonable accommodation is being made also requires some other discretionary planning approval (such as a use permit, environmental and design review permit, zone change, general plan amendment or subdivision), then the applicant shall file the information required by subsection A of this section together for concurrent review with the application(s) for discretionary approval. (Ord. 1838 § 54 (part), 2005).

**14.26.040 Review authority.**

A. Community Development Director. A request for reasonable accommodation shall be reviewed by the community development director if no planning approval is sought other than the request for reasonable accommodation.

B. Other Review Authority. A request for reasonable accommodation submitted for concurrent review with another discretionary planning approval shall be reviewed by the authority reviewing the discretionary planning application. (Ord. 1838 § 54 (part), 2005).

**14.26.050 Public notice.**

Written notice that a request for reasonable accommodation has been filed shall be given as follows:

A. Community Development Director Authority. For a request subject to review by the community development director, a notice shall be mailed to the owners of record of all properties which are immediately adjacent to the project which is the subject of the request at least fifteen (15) days prior to the decision by the director.

B. Other Review Authority. For a request made in conjunction with another discretionary planning approval, notice shall be given in the manner prescribed for the other discretionary planning

application. (Ord. 1838 § 54 (part), 2005).

#### 14.26.060 Findings and decision.

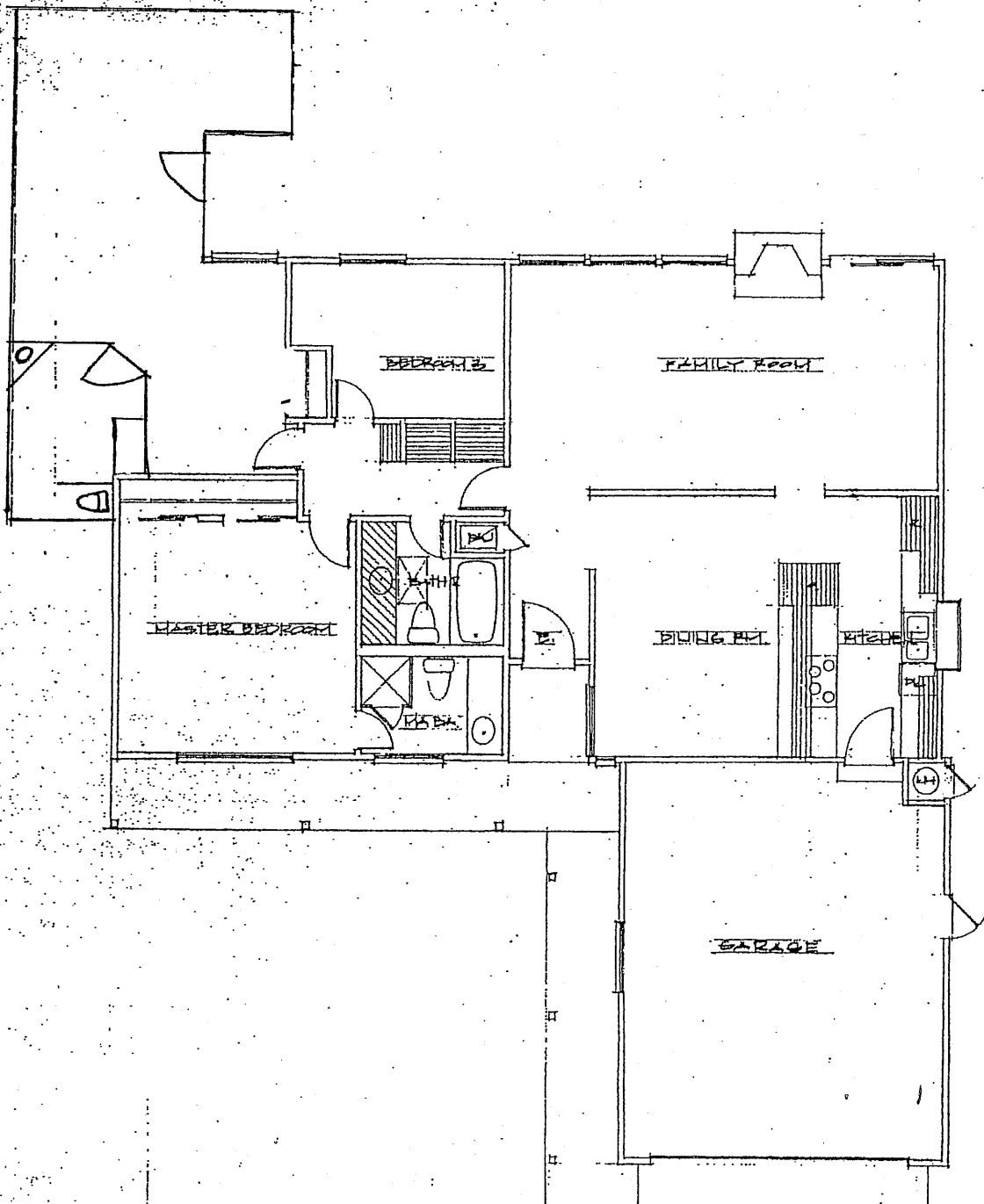
A. Findings. The written decision to grant or deny a request for reasonable accommodation shall be consistent with the Acts and shall be based on consideration of the following factors:

1. Whether the housing, which is the subject of the request, will be used by an individual with a disability under the Acts;
2. Whether the request for reasonable accommodation is necessary to make specific housing available to an individual with a disability under the Acts;
3. Whether there is an alternative accommodation which may provide an equivalent level of benefit;
4. Whether the requested accommodation would negatively impact surrounding uses or properties;
5. Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the city; and
6. Whether the requested reasonable accommodation would require a fundamental alteration in the nature of a city program or law, including, but not limited to, land use and zoning.

B. Conditions of Approval. In granting a request for reasonable accommodation, the reviewing authority may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would comply with the findings required in subsection A of this section. (Ord. 1838 § 54 (part), 2005).

#### 14.26.070 Appeal of determination.

A determination by the review authority to grant or deny a request for reasonable accommodation may be appealed in accordance with Chapter 14.28, Appeals, of this title. (Ord. 1838 § 54 (part), 2005).



ATTACHMENT 14  
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